

REMARKS

Claims 2, 4-24, 26 and 28-49 are pending in the present application. No amendments to the claims are made by this Response. Reconsideration of the claims is respectfully requested in view of the following remarks.

I. Alleged Non-Statutory Double Patenting

The Office Action rejects claims 2, 4-24, 26 and 28-49 under nonstatutory double patenting over claims 14, 17, 19 and 28 of U.S. Patent No. 6,479,929 since the claims, if allowed, would allegedly improperly extend the "right to exclude" already granted in the patent. This rejection is respectfully traversed.

As to claims 2, 4-24, 26 and 28-49, the Office Action states:

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a three dimensional display device comprising the electrical circuitry includes an addressable anode bus line and a cathode line, the phosphorus material emits light of one of a red, green, or blue color (see column 10, lines 14-25).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158, USPQ 210 (CCPA 1968). See also MPEP § 804.

Office Action dated April 22, 2003, pages 2-3.

As stated in MPEP § 804(II)(B)(2), in order for a nonstatutory double patenting rejection to be proper the following circumstances must exist:

(A) patent protection for the invention, fully disclosed in and covered by the claims of the reference, would be extended by the allowance of the claims in the later filed application;

(B) there was no valid excuse or mitigating circumstances making it either reasonable or equitable to make an exception; and

(C) no terminal disclaimer has been filed.

In the present case, no timewise extension of the U.S. Patent No. 6,479,929 would be obtained through issuance of the present application and thus, the Office Action has failed to meet requirement (A) above. Both the present application and the application which resulted in the issuance of U.S. Patent No. 6,479,929 were filed on the same day – January 6, 2000. Therefore, both the present application and U.S. Patent No. 6,479,929 are subject to the same 20 year term from the filing date of the application and would expire on the same date – January 6, 2020. Thus, no timewise extension of the term of the U.S. Patent No. 6,479,929 would be obtained through issuance of the present application apart from any extensions due to delay by the U.S. Patent and Trademark Office.

In addition, Applicants respectfully submit that claims 14, 17, 19 and 28 do not claim the same invention as is recited in claims 2, 4-24, 26 and 28-49 in the present application. Moreover, the Examiner has not met his burden of illustrating that claims 14, 17, 19 and 28 of the U.S. Patent claim the exact same subject matter as the present claims. Rather, the Examiner generalizes the invention claimed in U.S. Patent No. 6,479,929 and the claims in the present application and asserts that both the subject matter of the claimed invention in the present application is "fully disclosed in the patent":

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a three dimensional display device comprising the electrical circuitry includes an addressable anode bus line and a cathode line, the phosphorus material emits light of one of a red, green, or blue color (see column 10, lines 14-25).

MPEP § 804(II)(B)(2) states:

In determining whether to make this type of nonstatutory double patenting rejection, the examiner should do a side by side comparison of the reference and application claims, keeping mind that "only the claims of the patent can be considered as support for the rejection, its disclosure being looked to only to determine the meaning of the claims, which are to be read in light of the specification." 397 F. 2d at 352, 158 USPQ at 213.

The Examiner does not offer any side by side analysis of the claims of the present application and those of the U.S. Patent. Rather, the Examiner alleges that both claim "a three dimensional display device comprising the electrical circuitry includes an addressable anode bus line and a cathode line, the phosphorus material emits light of one of a red, green, or blue color." In actuality, the claims of the U.S. Patent and the present application recite separate and distinct inventions as illustrated by the following side-by-side comparison of exemplary claims.

Independent claims 2 and 26 of the present invention recites:

2. A three dimensional display, comprising:
a three dimensional matrix of light emitting elements capable of generating images in three dimensions; and
a base coupled to the three dimensional matrix, the base having electrical circuitry for powering and controlling the three dimensional matrix, wherein the light emitting elements are pixels, and wherein each of the pixels has a red light emitting element, a green light emitting element, and a blue light emitting element, and wherein the red light emitting element, green light emitting element and blue light emitting element each include a cell having an anode, a cathode, a gas volume and a phosphorus material. (emphasis added)

26. A three dimensional display, comprising:
a plurality of three dimensional light emitting elements configured into a three dimensional matrix of light emitting elements that emits light in three dimensions; and
a controller that controls the operation of the light emitting elements to generate a three dimensional image, wherein the light emitting elements are pixels, and wherein each of the pixels has a red light emitting element, a green light emitting element, and a blue light emitting element, and wherein the red light emitting element, green light emitting element and blue light emitting element each include a cell having an anode, a cathode, a gas volume and a phosphorus material. (emphasis added)

Claim 1 of U.S. Patent No. 6,479,929, from which claims 14, 17 and 19 depend, recites:

1. A light emitting element, comprising :
a plurality of walls configured in a pyramidal shape to enclose a volume filled with a gas;

an anode;
a cathode; and
a light emitting material that emits light when energized, wherein
when the cathode and anode are electrically charged, a discharge is created
between the anode and cathode electrically exciting the gas in the volume
to energize the light emitting material,
wherein each wall of the plurality of walls is transparent to visible
light and not transparent to ultraviolet light. (emphasis added)

Claims 14, 17 and 19 add to the features of claim 1 by reciting:

14. The light emitting element of claim 1, further comprising electrical
circuitry for operating the light emitting element.

17. The light emitting element of claim 14, wherein the electrical
circuitry includes an addressable anode bus line and a cathode line.

19. The light emitting element of claim 13, wherein the phosphorus
material emits light of one of a red, green or blue color.

Claim 28 of U.S. Patent 6,479,929, written in independent form, reads as follows:

28. A cell for use in a three-dimensional display, comprising:
a plurality of cell walls defining a gas filled volume;
a positively charged element;
a negatively charged element; and
a light emitting element, wherein, when the positively charged
element and the negatively charged element are charged, a discharge is
created between the positively and negatively charged elements, and
wherein the discharge energizes the gas causing the light emitting element
to emit light, wherein each cell wall of the plurality of cell walls is
transparent to visible light and not transparent to ultraviolet light, wherein
the light emitting element is adjacent the positively charged element.
(emphasis added)

Thus, the claims in U.S. Patent 6,479,929 are directed to a light emitting element
and a cell for use in a three dimensional display as opposed to the claimed three
dimensional display of the present application, as illustrated in claims 2 and 26 above. In
addition, each of the claims of the U.S. Patent cited as teaching the features of the claims
of the present invention, recite a plurality of walls and that these walls are transparent to
visible light and not transparent to ultraviolet light – a feature not found in independent

claims 2 and 26 of the present application. Moreover, claim 1 of the U.S. Patent requires that the walls be in a pyramidal shape and claim 28 requires that the light emitting element is adjacent a positively charged element. Neither of these features are in independent claims 2 and 26 of the present application.

Furthermore, none of the claims of the U.S. Patent claim a three dimensional matrix of light emitting elements or a base, as recited in claim 2 of the present application. None of the claims of the U.S. Patent claim a plurality of a plurality of three dimensional light emitting elements or a controller as recited in claim 26 of the present application. The claims of U.S. Patent 6,479,929 do not recite these features because the claims of the U.S. Patent are directed to a light emitting element or cell rather than a three dimensional display as in the present application. While claims 14, 17 and 19 of U.S. Patent 6,479,929 recite "circuitry", none of this "circuitry" is stated to include a base or a controller.

While the above comparison is only with regard to independent claims 2 and 26 of the present application, a similar side by side analysis may be applied to the other pending claims and additional distinctions between the claimed subject matter would be evident. Such a side by side analysis has not been offered by the Examiner and it is not Applicants' burden to perform this analysis. Applicants have shown above how the independent claims of the present application define a separate and distinct invention from the cited claims of the U.S. Patent and thus, the dependent claims of the present application would also define a separate and distinct invention from the cited claims of the U.S. Patent, at least by virtue of their dependency.

Thus, it is clear from the above that the claims of the present application are directed towards a separate and distinct invention from the invention recited in claims 14, 17, 19 and 28 of U.S. Patent 6,479,929. Furthermore, no timewise extension of U.S. Patent 6,479,929 would be obtained by issuance of the present application. Therefore, Applicants respectfully request withdrawal of the rejection of claims 2, 4-24, 26 and 28-49 under nonstatutory double patenting.

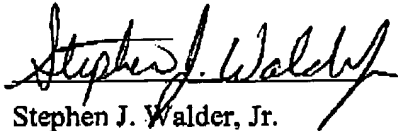
II. Conclusion

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE:

July 22, 2003



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